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1 Microsoft does not sell PCs. It licenses operating system software to PC
 2 manufacturers (“OEMs”), who preinstall the operating system and sell their PCs to
 3 consumers, online and through retail stores throughout the world. Microsoft knows how
 4 many operating system licenses it sells to OEMs, but it does not know how many of those
 5 operating systems are preinstalled in PCs that are sold in any particular country—because
 6 many OEMs sell their PCs worldwide. OEMs do not inform Microsoft how many PCs or
 7 upgrade licenses they sell in particular countries. *See* Moline Decl. ¶ 7 n.5 & ¶ 9.

8 Microsoft and its competitors therefore must make educated estimates from available
 9 information as to how many PCs (or upgradeable PCs) are sold in particular countries, such as
 10 the United States. Here, Microsoft asks the Court to seal confidential information that would
 11 reveal its internal proprietary methods of estimating how many PCs have been sold in the
 12 United States during particular time periods. As explained in the Declaration of Nicholas
 13 Psychogeos in Support of Microsoft’s Motion to Seal [Dkt No. 86]:

14 [T]he proprietary information contained within the Moline
 15 Declaration regarding the current and historical size of the
 16 personal computer market in the United States has significant
 17 competitive value to Microsoft, and Microsoft does not disclose
 18 that information to the public. That data is important and
 19 valuable because it is used to provide an understanding of
 20 business performance within the industry, and it forms the basis
 21 for business planning and forecasting within the industry.
 22 Microsoft’s competitors do not disclose their own specific and
 23 proprietary data regarding the size of the U.S. personal
 24 computer market to Microsoft. As a result, if Microsoft’s
 25 detailed information regarding the size of the U.S. personal
 26 computer market were disclosed, Microsoft would suffer a
 27 substantial competitive disadvantage—Microsoft’s competitors
 would know the specific data used as a basis for Microsoft’s
 business performance, planning, and forecasting, but Microsoft
 would not know the data used by its competitors for those same
 purposes.

23 Psychogeos Decl. ¶ 10. Microsoft’s internal estimates of how many PCs have been sold in the
 24 United States rely on internal proprietary methods of making those estimates and have
 25 substantial competitive value to Microsoft. Public disclosure of this information would cause
 26

1 significant harm to Microsoft's competitive interests. *Id.* As a result, Microsoft respectfully
2 requests that the Court direct the Clerk to maintain the Moline Declaration under seal.

3 Plaintiffs make one other assertion that requires a response. Plaintiffs say that
4 "Microsoft has marked as 'Confidential' virtually every document produced through
5 discovery to date." Pls' Resp. at 1. In fact, of the nearly 55,000 pages of documents that
6 Microsoft has produced, approximately 9,800 pages (or about 18%) have **not** been designated
7 as "Confidential," including pages from documents describing public communications, which
8 go to the heart of the pending class certification motion. Microsoft has designated about 82%
9 of the pages produced as "Confidential." But given that Plaintiffs' discovery has focused on
10 Microsoft's dealings with its customers, particularly the OEMs that preinstall its operating
11 systems on their PCs, the Court should not be surprised that Microsoft has produced a large
12 number of "Confidential" documents concerning the sensitive contractual relationships that
13 underlie its core business. Indeed, this Court has twice agreed with Microsoft that it properly
14 used the confidentiality designation. At the same time, however, Microsoft has produced
15 thousands of pages of documents that consumers would have seen, read or obtained. Those
16 materials are not "Confidential," and Microsoft has not designated them as such.

17 For the reasons set forth above, and in Microsoft's motion to seal [Dkt. No. 85],
18 Microsoft has made the showing required under CR 5(g) and respectfully requests that the
19 Court direct that (a) the Declaration of Christine Mullaney Sundlie [Dkt. No. 88], including
20 Exhibits A through F thereto, (b) the Moline Declaration, and (c) those portions of
21 Microsoft's Brief that refer to or describe those materials remain under seal.

1 DATED this 11th day of December, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that on Tuesday, December 11, 2007, I electronically filed the foregoing *Reply Brief in Support of Motion to Seal Pursuant to CR 5(g)* with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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